

REMARKS

Claims 1-50 were previously cancelled. In this Reply, Applicant has amended claim 51, and cancelled claim 56. Claims 51-55, and 57-66 are pending in the present application.

Claim Objections

Claim 51 was objected to because a website is a collection of data and contains no structure as required in a systems claim. Claim 51 has been amended per the Examiner's recommendation. Claims 52-60 were objected to for being dependent on claim 51.

Accordingly, withdrawal of this objection is respectfully requested.

35 U.S.C. § 112, first paragraph

Claims 56, 58, and 60 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Claim 56 has been cancelled.

Claims 58 and 60 were rejected as allegedly being unsupported by the specification. Specifically, the Examiner alleges that the specification does not support an HTTP command, to a clearinghouse server, embedded in a sub-link. (See office action page 3). The specification page 31, lines 1-22 disclose a referral link that is comprised of two segments, a first segment linking a webpage to a clearinghouse server, and a second segment linking from the clearinghouse server to a merchant. Although it is not explicitly stated that the two segments are comprised of HTTP commands, HTTP commands are necessary for the function described. Further, HTTP and HTTP commands are found in the applications incorporated by reference into the specification (see, for example, U.S. patent application Ser. No. 09/558,356 page 9, lines 22-

23 and corresponding U.S. patent No. 7,020,622 column 7, lines 27-29). Thus, support for claims 58 and 60 are included in the specification as filed implicitly and explicitly since the applications incorporated by reference are part of the specification as filed.

Accordingly, withdrawal of this rejection is respectfully requested.

35 U.S.C. § 112, second paragraph

Claim 56 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Claim 56 has been cancelled rendering this rejection moot.

Accordingly, withdrawal of this rejection is respectfully requested.

35 U.S.C. § 103(a)

Claims 51-56 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,249,056, to Crouthamel et al. (hereinafter "Crouthamel") in view of U.S. Patent No. 6,804,960, to Landau et al. (hereinafter "Landau"). Applicants traverse these rejections for the reasons discussed below.

Applicant's claimed technology relates to Internet web sites and, more specifically, to successive web site referrals that result in an electronic purchase.

Independent claim 51 recites, "wherein said first affiliate server communicates a HTTP command to said clearinghouse server including an affiliate field indicating a user's use of said primary referral link[.]" The Office Action confirms that Crouthamel does not specifically disclose HTTP commands including an affiliate field comprising one or more subvariables

indicating referral activity (Office Action page 7). Nor does Crouthamel implicitly disclose this feature.

The second reference, Landau, cannot cure this fundamental deficiency in Crouthamel. Landau describes a system in which two separate affiliate systems can refer their users to each other without merging the two affiliate systems. This is done by using an Essociate server between the two affiliate systems. (See Landau, col. 15, line 66 – col. 20, line 2). Landau provides an example in which CDMerchant.com is part of one affiliate system and MusicMemoribilia.com is part of another affiliate system, and both are in communication with an Essociate server. (Id.) Fred.com is part of the CDMerchant.com affiliate system, and Landau describes that Fred.com can refer its user to CDMerchant.com, which can then refer the user to MusicMemoribilia.com in the other affiliate system through the Essociate server. (Id.) Claim 51 contains a first affiliate server, a second affiliate server, a clearinghouse server, and a merchant server. In contrast, Landau provides an arrangement based on the following elements: Fred.com, CDMerchant.com, Essociate server, and MusicMemoribilia.com. (See Landau, col. 15, line 66 – col. 17, line 38; see also Landau Fig. 7).

Importantly, Landau fails to disclose a communication link between Fred.com and the Essociate server. Rather, Landau teaches having Fred.com refer its user to CDMerchant.com directly without communicating with the Essociate server, and then having CDMerchant.com refer the user to MusicMemoribilia.com through the Essociate server. This arrangement in Landau clearly does not disclose claim 51's feature of "said first affiliate server communicates a HTTP command to said clearinghouse server including an affiliate field indicating a user's use of said primary referral link." Therefore, Landau and Crouthamel, both singularly and in combination, fail to teach this feature.

The Examiner states that it would have been obvious to a PHOSITA to add the HTTP commands allegedly taught by Landau to Crouthamel to allow for the tracking of referrals. In Landau, an affiliate such as Fred.com is not in contact with the Essociates server, thus, HTTP tracking is needed. In Crouthamel, each referral link moves through the central hub itself, so no HTTP tracking is needed (see, for example, Crouthamel column 15, lines 4-13). Thus, there would be no motivation or reason to combine the alleged teaching of Landau with Crouthamel.

Independent claims 61 and 64 recite features similar to claim 51's features discussed above. These claims are believed to be allowable for at least the reasons stated above in regard to claim 51.

In rejecting independent claims 51, 61, and 64 the Office Action generally cites various sections of Crouthamel (see Office Action pages 4-6) without linking the features of the claims to the express teachings of the reference. "The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." 37 CFR § 1.104(c)(2) and MPEP § 706. A review of the cited passages reveals that the reference fails to disclose the claim limitations found in claims 51, 61, and 64. Certainly nothing in the Office Action would lead to a different conclusion.

Claim 51 recites in part:

wherein said clearinghouse server is operable to assign compensation to each of said first affiliate website and said second affiliate website in response to (i) a network-connected user's use of said primary referral link provided by said first affiliate website to reach said second affiliate website; (ii) said user's use of said secondary referral link provided by said second affiliate website to reach said merchant website; and (iii) said user's completion of the electronic transaction with said merchant site.

The Office Action confirms that Crouthamel does not explicitly disclose successive referrals (Office Action page 6). Please note claim 51 does not use the term "successive

referrals” per se. The actual words of the claim must be considered. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). MPEP § 2143.03 (“All words in a claim must be considered in judging the patentability of that claim against the prior art.”). Recognizing its absence from Crouthamel, the Office Action also fails to demonstrate where in the prior art the above mentioned features of claim 51 are expressed.

The Office Action also alleges that successive referrals through a central hub would be obvious since Crouthamel “expansively discloses that each merchant has many partners” and since central accounting via the central hub is well-known for accounting convenience for the affiliates (citing Pettersen US 6826594). In contrast to the system of the present invention, Crouthamel teaches a system for exchanging data between partner and merchant sites that employ different database formats by translating the formats at a clearinghouse site (see Crouthamel column 3, lines 28-48). “Ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art references as a whole.” (Emphasis added) MPEP § 2141.02. The novelty and focus of Crouthamel is the conversion of data from one site to a format compliant with the other site, and vice-versa. These are aspects that have no real bearing on Landau or the present invention. Therefore, the Office Action’s inclusion of “successive referrals” in Crouthamel cannot be supported by the teachings of Crouthamel and thus appears to be based on impermissible hindsight reasoning.

The portion of Pettersen cited discloses that since credits to affiliates and debits to merchants can be stored in a central hub, all of the credits and debits can be aggregated and one payment from the merchant to the referring affiliate can be made per a certain time period, for accounting convenience (rather than many small separate payments). The accounting scheme in

Petersen has no relevance in teaching the features of claim 51 listed above. Petersen fails to teach or suggest a system where "successive referrals" may be made in Crouthamel through the central hub. Further, Crouthamel's "expansive" disclosure that each merchant may have many partners is well known; this, however, cannot not teach or suggest the features of claim 51 cited above. The Examiner does not allege that "successive referrals" are taught by Landau, nor are they. Thus, Crouthamel and Landau, both singularly and in combination fail to teach or suggest these features.

Dependent claim 57 recites, "wherein said primary referral link comprises a first sub-link from said first affiliate server to said clearinghouse server and a second sub-link from said clearinghouse server to said second affiliate server." These features of claims 57 are not taught by either Crouthamel or Landau. In rejecting claim 57 the Examiner simply states that Crouthamel and Landau disclose generating website links using http commands and thus, the above feature would have been obvious to a PHOSITA, without providing any justification or reasoning on why it would have been obvious. "Obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so." *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). The Office Action fails to satisfy this requirement.

Claims 58-60 are dependent on claim 57 and are believed to be allowable for at least the reasons described above regarding claim 57.

Further, claims 52-55, 57-60, 62-63, and 65-66 are distinct for the additional limitations described in each claim.

Accordingly, withdrawal of the rejection is respectfully requested.

Conclusion

In view of the foregoing, applicants submit that claims 51-55, and 57-66 are allowable. Accordingly, reconsideration and allowance of these claims are respectfully requested.

No fee is believed to be due with this submission, other than the fees for the request for continued examination and extension of time authorized in page 1 of this Reply. However, if any other fees are due, please charge such fees to Troutman Sanders LLP Deposit Account No. 20-1507.

Respectfully submitted,



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Suraj Balusu
Registration No. 65,519
TROUTMAN SANDERS LLP
405 Lexington Ave
New York, NY 10174
(212) 704-6209